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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/006,045	12/04/2001	Eric Rosen	010561	9631

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Qualcomm Incorporated  
Patents Department  
5775 Morehouse Drive  
San Diego, CA 92121-1714

EXAMINER

LELE, TANMAY S

ART UNIT	PAPER NUMBER
	2684

DATE MAILED: 01/09/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b>	Application No.	Applicant(s)
	10/006,045	ROSEN ET AL.
	Examiner	Art Unit
	Tanmay S Lele	2684

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

THE REPLY FILED 19 December 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

a)  The period for reply expires 3 months from the mailing date of the final rejection.

b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1.  A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2.  The proposed amendment(s) will not be entered because:
  - (a)  they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b)  they raise the issue of new matter (see Note below);
  - (c)  they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d)  they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_.

3.  Applicant's reply has overcome the following rejection(s): \_\_\_\_.
4.  Newly proposed or amended claim(s) \_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5.  The a) affidavit, b) exhibit, or c) request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_.
6.  The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7.  For purposes of Appeal, the proposed amendment(s) a) will not be entered or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_.

Claim(s) objected to: \_\_\_\_.

Claim(s) rejected: 1-60.

Claim(s) withdrawn from consideration: \_\_\_\_.

8.  The drawing correction filed on \_\_\_\_ is a) approved or b) disapproved by the Examiner.

9.  Note the attached Information Disclosure Statement(s) ( PTO-1449) Paper No(s). \_\_\_\_.

10.  Other: \_\_\_\_.

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## **DETAILED ACTION**

### ***Response to Arguments***

1. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Regarding claims 1- 60, Applicant attempts to overcome the rejection by stating, “However, the claimed limitation of ‘transmitting floor control request as an Internet Protocol (IP)’ is not a statement of use, rather it [is] a positive and explicit step of the claimed method....” Note that the combination of Yao and Maher, for the cited motivation teaches the above, as stated in the previous Office Actions (paper 8, page 7). Note there, Yao teaches of a transmitting floor control request ...” while Maher (combined with Yao for the cited motivation) “(IP).” Note further that, as stated in the previous Office Action (paper 10), it is respectfully believed (as further described below and in paper number 10) that Maher does indeed relate and disclose, “... IP, IP multicast, or IP datagram!” Hence, Examiner is not persuaded by Applicant’s arguments that the references, when combined for the cited motivation, do not teach or recite the claimed a currently presented.

2. In response to applicant's argument that “Maher does not disclose, directly or indirectly, anything about IP, IP multicast, or IP datagram!” a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process

of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Regarding claims 1 – 60, Applicant attempts to overcome the rejection by stating, “Simply, Maher does not disclose, directly or indirectly, anything about IP, IP multicast, or IP datagram!” Examiner once more respectfully disagrees with Applicant. It is reverently believed Maher does disclose IP, one example being in the cited passages from the previous Office Action (paper number 5, page 7; column 6, lines 36 – 46 for example) specifically line 39 where the term “IP multicast” is noted (note that, as stated on page 7 of paper number 5, the rejection is in view of Maher et al. US Patent No. 6,298,058). Note further the “Field of Invention” (column 1, lines 5 – 10) states specifically, “This invention relates generally to communication systems, and particularly communication systems incorporating multicast internet protocol (IP) addressing.” The “Background of the Invention” further relates of IP protocol and a use being IP multicasting and further of “...IP multicasting protocols provide one to many or many to many communications capability in a connectionless packet network” (column 1, lines 39 – 41). Note further that, as stated in the previous Office Action (paper 10), Newton’s Telecom Dictionary 10<sup>th</sup> Edition definition of datagram (again defined as “a finite length packet with sufficient information to be independently routed from source to destination”) was cited. Thus “datagram” as defined by Newton’s Telecom Dictionary 10<sup>th</sup> Edition would meet and be within the scope of Maher’s invention (when viewed as one example with column 1, lines 39 – 41 and again throughout Maher). Hence, Examiner respectfully believes Maher does disclose of “IP, IP

multicast, or IP datagram!" and is still not persuaded by Applicant's assertion that the references, when combined for the cited reasons, do not teach or recite the claimed as currently presently.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tanmay S Lele whose telephone number is (703) 305-3462. The examiner can normally be reached on 9 - 6:30 PM Monday – Thursdays and on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nay A. Maung can be reached on (703) 308-7745. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-0377.

Tanmay S Lele  
Examiner  
Art Unit 2684

tsl  
January 7, 2004

  
NAY MAUNG  
SUPERVISORY PATENT EXAMINER